

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-31191-GFK

Chapter 13

Michael S. Moody,

Debtor(s).

***NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY***

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TO: Debtor(s) and Attorney for Debtor(s); Michael J Farrell, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Bank, N.A., a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **10:30 am on Monday, September 27, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Wednesday, September 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Thursday, September 16, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Bank, N.A. seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on March 1, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Bank, N.A. holds a valid, perfected interest in a 1994 Chevy 1/2 Ton Pickup, vehicle identification number 2GCEK19K9R1309722 (the "Vehicle").

7. Copies of Wells Fargo Bank, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Bank, N.A.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Chapter 13 Plan requires direct payments to Wells Fargo Bank, N.A. Presently, a delinquency under the Contract exists for the months of June through August 2004 totaling at least \$835.65. No evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$6,409.01 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$3,825.00. Jason Moody is a codebtor on the Contract.

10. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide Wells Fargo Bank, N.A. with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Bank, N.A. to relief from the stay.

11. Wells Fargo Bank, N.A. requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, C. Thompson, or some other representative of Movant, will testify on behalf of Wells Fargo Bank, N.A..

13. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Bank, N.A. will repossess the Vehicle promptly upon the Court signing the Order.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Bank, N.A. respectfully moves the Court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Bank, N.A. to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 8, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Michael S. Moody,

Bky. No. 04-31191-GFK

Debtor(s).

Affidavit of Carmen Thompson

I, Carmen Thompson, of Wells Fargo Bank, N.A., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Bank, N.A. has a security interest in the following (the "Collateral"):  
94 chevy 1/2 ton ext vin#2GCEK19K9R1309722.
2. \$6,409.01 is the outstanding balance under the contract as of September 8, 2004.
3. \$6,409.01 is the amount of the existing delinquency under the contract.
4. \$3,825.00 is the fair market value of the Collateral.
5. No Appropriate insurance has been verified.
6. is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated: 9/8/2004

*Carmen Thompson*

Carmen Thompson  
Bankruptcy Specialist  
Wells Fargo Bank, N.A.

Subscribed and sworn to before me on  
September 8, 2004.

*Jennifer Hartman*  
Notary



**WELLS  
FARGO****Combined Consumer Note  
and Security Agreement**

Borrower's name

**JASON M. MOODY**  
Co-borrower's name**MICHAEL S. MOODY****WELLS FARGO BANK MINNESOTA****NATIONAL ASSOCIATION**  
Bank's address**1750 CONVERSE DR****NORTH MANKATO, MN****56003****08/07/2002****3003104028**

In this agreement, ME, and MY refer to each borrower and co-borrower who signs this agreement, YOU and YOUR refer to the bank. This agreement contains my promise to repay my loan, and the conditions of the loan.

**My Promise**

I promise to pay to your order **TEN THOUSAND EIGHT HUNDRED**

**FORTY SEVEN AND 43/100**

Dollars

(**\$ 10,847.43**) plus the interest or minimum Finance Charge described below:

**Interest or Minimum Finance Charge**

☐ A minimum finance charge of \$ \_\_\_\_\_. If I do not pay my loan in full when it is due, you will charge me interest at the rate of \_\_\_\_\_ a year on the unpaid balance of my loan from the date it is due until it has been paid in full.

☒ Interest on the unpaid balance of my loan from **08/07/2002**

until it has been paid in full at:

☒ a fixed rate of **7.99** % a year.

☐ a variable rate of \_\_\_\_\_ % plus the Index Rate. The Index Rate is defined in the Disclosure Statement. The interest rate as of the first date shown above is \_\_\_\_\_ % a year. However, the interest rate on my loan will never be less than \_\_\_\_\_ % a year or more than \_\_\_\_\_ % a year. It will be adjusted:

☐ daily on the same day the Index Rate changes.

☐ Starting \_\_\_\_\_

the rate for any given \_\_\_\_\_ will be calculated using the Index Rate in effect on the \_\_\_\_\_ business day of the \_\_\_\_\_

☐ as follows \_\_\_\_\_

Interest will be computed on the basis of the actual number of days elapsed in a **365** day year

**Payment Schedule**

☒ I will pay installments of principal and interest as follows:

a first payment of \$ **265.29** on **09/15/2002**;

**46** payments of \$ **265.29** each on the **15**

day of each **MONTH** starting on **10/15/2002**;

and a final payment on **08/15/2006**. If the interest rate on my loan does not change and I make all my payments on schedule, the final payment will be \$ **265.29**.

☐ I will pay the entire principal on \_\_\_\_\_

I will pay interest:

☐ when the loan is due.

☐ every \_\_\_\_\_, starting on \_\_\_\_\_, and also on \_\_\_\_\_

**Variable Rate Payment Options**

☐ Increases in the interest rate on my loan will cause my final payment to increase. If this happens, I may either pay the full amount due or extend my payments for no more than \_\_\_\_\_ months. Any extension will be at the same variable rate terms described above, with the same regular payments of \$ \_\_\_\_\_. On \_\_\_\_\_, I will pay in full the amount due on this loan.

☐ Increases in the interest rate on my loan will cause my periodic interest payments, if any, and my final payment to increase.

☐ Increases in the interest rate on my loan will cause my final payment to increase.

**Charge for Late Payments**

☒ I will pay a late charge of \$ **13.25** each time I am more than **10** days late in making a payment.

☐ I will pay a late charge of \_\_\_\_\_ % of the unpaid payment each time I am more than \_\_\_\_\_ days late in making a payment.

Bank use: **02526 2:267 08/07/2002 09:59**

Account Number

Banker Number

**ACH DDA# 0850 54618**

W 12X85 (12-99-19288-J) PH: Combined Consumer Note and Security Agreement AZ,CA,IL,IN,MI,MN,MT,NE,NH,NY,NJ,OH,SD,TX,UT,WY

**Renewal**

☐ This agreement renews Note No. \_\_\_\_\_ dated \_\_\_\_\_

**Prepaying My Loan**

I may prepay my loan at any time. If I fully prepay my loan, ☐ I may

☒ I will not have to pay a prepayment penalty of \$ \_\_\_\_\_ R/A minus the amount of interest that has been earned up to the date I prepay.

**Security**

☐ No security is required.

☒ To protect you if I default under this agreement for any extension or renewal of it I give you a security interest in:

☒ Motor Vehicle (Year/Make/Serial Number)

**1994 CHEVROLET 1/2 TON 26CCK19X9R1309722**

☐ The following property:

I will keep the secured property insured if you require it, and pay all related property taxes when due.

☐ This agreement (including extensions or renewals) is secured by a separate

☐ assignment ☐ security agreement ☐ mortgage or deed of trust

**See Reverse Side for Additional Terms Applicable to This Agreement****NOTICE TO CONSUMER**

**THIS IS A CONSUMER CREDIT TRANSACTION.**

I understand that:

- I should not sign this agreement before I read the writing on both sides, even if otherwise advised.
- I should not sign this if it contains any blank spaces.
- I am entitled to an exact copy of this and any other agreement I sign.
- I have the right to prepay the unpaid balance due under this agreement at any time without penalty, and I may be entitled to receive a refund of unearned charges in accordance with the law.

**Signature of Borrower and Co-borrower**

I received and read a filled-in copy of this agreement before signing it. I understand and agree to all its terms, including the terms on the reverse side. I also received and read a filled-in copy of the Federal Truth in Lending Disclosure.

Borrower's Signature

**Jason Moody****1750 LA MAR DR****NORTH MANKATO****MN 56003 1559**

Co-borrower's Signature

**Michael S. Moody****1750 LA MAR DR****NORTH MANKATO****MN 56003 1559****Owner of the Security**

The person signing here owns an interest in the property securing this loan. By signing, he or she joins in granting the bank a security interest in that property. The owner is not personally responsible for payment of the loan.

Owner's Signature

**X**

Address

**Guarantor's Signature**

The bank may require the guarantor to pay the loan at any time the loan is in default, whether or not the bank has then made any effort to collect the loan from the borrower or co-borrower. By signing below, the guarantor acknowledges having received and read a filled-in copy of this agreement.

**SEE REVERSE SIDE FOR NOTICE TO COSIGNER (GUARANTOR).**

The guarantor will continue to be responsible even if the bank releases its security interest in property described above, consents to changes in this agreement, or releases any other person from responsibility. Unless prohibited by law, the guarantor must also pay any attorney's fees and other costs of enforcing this guaranty.

Guarantor's Signature

**X**

Address

300 310 4028

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

MOODY JASON MICHAEL  
1785. LAMAR DRV  
NO MANKATO MN 56003

FUA440

94 Year	CHEV Make	PKGM4 Model	G2520P251 Title NR
2GCEK19K9R1309722 VIN		08/07/02 Security Date	NO Rebuilt

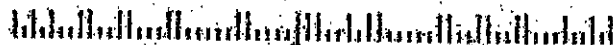
1ST SECURED PARTY

**LIEN HOLDER**

**RETAIN THIS DOCUMENT** - See reverse  
side of this form for removing this lien.

WELLS FARGO BANK  
1760 COMMERCE DR  
MANKATO MN 56003-1803

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-31191-GFK

Chapter 13

Michael S. Moody,

Debtor(s).

***MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY***

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Wells Fargo Bank, N.A. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Bank, N.A. holds a perfected interest in a 1994 Chevy 1/2 Ton Pickup with a vehicle identification number 2GCEK19K9R1309722 (the "Vehicle"). Payments due under the terms of the Chapter 13 Plan totaling \$835.65 have not been made by the Debtor(s). The balance due under the Contract is \$6,409.01 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$3,825.00. Jason Moody is a codebtor on the Contract. No evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan and no evidence has been provided to verify insurance coverage on the Vehicle.

Wells Fargo Bank, N.A. does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Bank, N.A. with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of

Section 362(d)(1), entitling Wells Fargo Bank, N.A. to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

### CONCLUSION

For all the reasons set forth herein, Wells Fargo Bank, N.A. is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Respectfully Submitted,

Dated: September 8, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100



U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Michael S. Moody

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-31191-GFK

Bradley J. Halberstadt, an agent of Stewart, Zlmen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

-----  
United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
Ian Tranqair Ball  
12 S. 6th St., Ste. 326  
Minneapolis, MN 55402

(Trustee)  
Michael J Farrell  
PO Box 519  
Barnesville, MN 56514

(Debtor(s))  
Michael S. Moody  
1785 Lamar Drive  
N. Mankato, MN 56003

The Ramsey Law Firm, PC  
Capital One Auto Finance  
Acct. No. 154675  
PO Box 201347  
Arlington, TX 76006

(Co-Obligor)  
Jason Moody  
1785 Lamar Drive  
N. Mankato, MN 56003

Household Financial Services  
1270 Northland Dr., Ste. 200  
Mendota Heights, MN 55120

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 8, 2004

Signed: /e/ Bradley J. Halberstadt  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Case No. 04-31191-GFK

Chapter 13

Michael S. Moody,

Debtor(s).

***ORDER GRANTING  
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Monday, September 27, 2004 at the motion of Wells Fargo Bank, N.A. seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Bank, N.A. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 is immediately terminated as to Wells Fargo Bank, N.A., and Wells Fargo Bank, N.A. is authorized to foreclose its interest in the subject 1994 Chevy 1/2 Ton Pickup, vehicle identification number 2GCEK19K9R1309722 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory F. Kishel  
United States Bankruptcy Judge